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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 12, Original

THE UNITED STATES OF AMERICA,
Complainant,

vs.

THE STATE OF ALABAMA.

BRIEF AND ARGUMENT IN OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT.

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SUPREME COURT OF THE UNITED STATES

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THE UNITED STATES OF AMERICA,
Complainant,

vs.

THE STATE OF ALABAMA.

BRIEF AND ARGUMENT IN OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT.

Statement of Case.

The statement in support of motion for leave to file the bill of complaint appearing on pages 2 and 3 of the motion for leave to file complaint and complaint submitted by the United States of America in this cause is substantially a correct statement of this case and for that reason statement of the case is not made here. There are additional provisions relating to *ad valorem* real estate taxes which we believe should be set out, however.

In the State of Alabama the Supreme Court has recognized the distinction between fixing the rate of taxation, and fixing the value of property for purposes of taxation.

The fixing of the rate is designated the "levy" of the tax, an exercise of the legislative function; and the fixing of the value of the property for purposes of taxation is designated the "assessment", an exercise of a quasi-judicial function. See *Perry County* v. *Railroad Company*, 58 Ala. 546, 559 (1877).

The levy of the *ad valorem* real estate tax for State purposes is made by the legislature (Gen. Acts Alabama, 1935, pp. 256, 263, Sec. 8).[1] The levy for general county purposes is made by the court of county commissioners (*op. cit.*, p. 288, Sec. 64).[2] There is an additional levy available for the county under Section 213 of the Code of Alabama of 1923, as amended by an Act approved April 21, 1936 (Gen. Acts of Alabama, Ex. Sess. 1936, p. 217).[3] As a matter of fact Macon County, Alabama, is and has been levying the additional one-fourth of one percentum authorized under this provision for the construction and maintenance of roads and bridges for many years, including the tax year commencing October 1, 1936, and ending September 30, 1937.

In addition to these taxes there are special school taxes authorized under the provisions of Art. XIV, Section 269 of the Constitution of Alabama of 1901,[4] and Amendment III to this Constitution (see Vol. 1, Code of Alabama, 1923, p. 429).[5] These special school taxes are authorized only by elections for the voters of the county.

The Supreme Court of Alabama has held that these school taxes may be levied as late as September 21 for the current tax year expiring on September 30 of the same year, though the tax is imposed on property assessed as of October 1 of the preceding year. *Alexander* v. *Board of*

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[1] Appendix page 26.
[2] Appendix page 29.
[3] Appendix page 25.
[4] Appendix page 24.
[5] Appendix page 24.

Revenue, 219 Ala. 110 (1929). See also *Pierson* v. *Phillips,* 214 Ala. 88 (1925).

Though it does not appear in the statement in support of motion or in the proposed bill of complaint in this case the one mill county school tax authorized by section 269 of the Constitution and the three mill county and three mill district tax authorized by Amendment III to the Constitution levied on the properties involved in this case for the tax year commencing October 1, 1936 and ending September 30, 1937, were authorized by an election held on June 14, 1937.

Hence, in Alabama it is not an uncommon occurrence for the taxes to be levied during the tax year at a much later date than the tax day.

The question for consideration by this Court is whether leave should be granted to the United States of America to file a bill of complaint in this Court to quiet title to certain real estate in Macon County, Alabama, against the State of Alabama, concerning certain purported sales of said real estate to the State of Alabama for the purpose of enforcing tax liens alleged to have attached to said real estate prior to the date said real estate was purchased by the United States of America. It is our contention that such leave should not be granted and in support of this contention the propositions of law hereinafter set out with the authorities cited thereunder, are maintained:

Summary of Argument.

I.

Original Jurisdiction Should Not Be Exercised by This Court in This Case to Construe the Revenue Laws of Another Sovereignty.

A. This case involves a construction of Sections 8, 29, 30, 32, 42, 64, 372 and others of the Revenue Laws of Ala-

bama of 1935 (Gen. Acts of Alabama 1935, pp. 256, 263, 274, 275, 279, 280, 288, 566).

B. The original jurisdiction of this Court cannot be claimed as a matter of right merely because a State is a party to the proceedings.

Art. III, Section 2, Federal Constitution;
United States v. *West Virginia*, 295 U. S. 463 (1935);
Missouri v. *Illinois & Chicago District*, 180 U. S. 208 (1901);
Wisconsin v. *Pelican Insurance Co.*, 127 U. S. 265 (1888);
Massachusetts v. *Mellon*, 262 U. S. 447 (1923);
Florida v. *Mellon*, 273 U. S. 12 (1927);
Alabama v. *Arizona*, 291 U. S. 286 (1934).

See *North Dakota* v. *Minnesota*, 263 U. S. 365, 373 (1923).

C. Revenue laws of one sovereignty will not be construed by the courts of another.

Pratt v. *Dean*, 246 Mass. 300 (1923).

See Restatement of Conflicts of Laws (1934), Section 610 (c);
Moore v. *Mitchell*, 281 U. S. 18 (1930);
Massachusetts v. *Missouri*, 308 U. S. 1 (1939).

Cf. *Texas* v. *Florida*, 306 U. S. 398 (1939).

II.

Original Jurisdiction Should Not Be Exercised by This Court in This Case Since There Is Another Forum Available to the Parties.

Massachusetts v. *Missouri*, 308 U. S. 1, 19 (1939);
Alabama v. *Arizona*, 291 U. S. 286, 291 (1934);
Dissenting opinion in *Texas* v. *Florida*, 306 U. S. 398, 428 (1939);
Pennsylvania v. *Williams*, 294 U. S. 176, 185 (1935).

Cf. First National Bank v. *Weld County*, 264 U. S. 450 (1924);
Natural Gas Co. v. *Slattery*, 302 U. S. 300 (1937);
Matthews v. *Rodgers*, 284 U. S. 521 (1932).

A. The United States had an adequate remedy in the courts of the State of Alabama.

Wiley v. *Parmer*, 14 Ala. 627 (1848);
Raisler v. *Mayor & Council of Athens*, 66 Ala. 194 (1880);
Ward v. *First National Bank of Hartford*, 225 Ala. 10 (1932);
Pullman Car & Mfg. Co. v. *Hamilton*, 229 Ala. 184 (1934).

See *Allred* v. *Dunn*, 207 Ala. 469 (1922).

Sections 296-299, Revenue Laws of Alabama of 1935 (Gen. Acts of Alabama 1935, pp. 256, 279);
Section 237, Revenue Laws of Alabama of 1935 (Gen. Acts of Alabama 1935, pp. 256, 358, 359).

B. A judicial proceeding is now available in the courts of Alabama to settle the questions here raised.

Section 251, Revenue Laws of Alabama of 1935 (Gen. Acts of Alabama 1935, pp. 256, 363).

III.

Original Jurisdiction Should Not Be Exercised By This Court in This Case for the Complainant is not Entitled to Relief Under the Proposed Bill of Complaint.

Alabama v. *Arizona*, 291 U. S. 286, 291 (1934).

A. The lien for taxes attaches to the property subject to taxation at the commencement of the tax year in Alabama which can be discharged only by payment.

Section 372 Revenue Laws of Alabama of 1935 (Gen. Acts of Alabama 1935, pp. 256, 566);

Swann & Billups v. *State*, 77 Ala. 545 (1884);
Driggers v. *Cassady*, 71 Ala. 529 (1882);
Rodgers v. *Gaines*, 73 Ala. 218 (1882);
Kuhl v. *Long*, 102 Ala. 563 (1893);

Biennial Report Attorney General Alabama 1936-1938, p. 724. (Same opinion in Quarterly Report, Attorney General Alabama Vol. XII, July-September 1938, p. 78).

See *Yarbrough Bros. Hardware Co.* v. *Phillips*, 209 Ala. 341 (1923);
Frost v. *State ex rel Clements*, 153 Ala. 654, 665 (1907);
Bains Bros. Inv. Co. v. *Purdie*, 180 Ala. 333, 337, 338 (1912);
State v. *Alabama Educational Foundation*, 231 Ala. 11, 16 (1935);
Cf. Henderson v. *Simmons*, 234 Ala. 329, 331, 332 (1937);
State Tax Commission v. *Commercial Realty Co.*, 236 Ala. 358, 361 (1938);
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Opinion of Justices, 234 Ala. 358 (1937).

IV.

Original Jurisdiction Cannot Be Exercised By This Court in This Case to Make the State of Alabama a Defendant.

Art. I Section 14 Constitution of Alabama of 1901;
Alabama Industrial School v. *Reynolds*, 143 Ala. 579 (1904);
Alabama Industrial School v. *Addler*, 144 Ala. 555 (1905);
State Docks Commission v. *Barnes*, 225 Ala. 403 (1932);
Dunn Construction Co. v. *State Board of Adjustment*, 234 Ala. 372 (1937);
Cf. United States v. *Texas*, 143 U. S. 621 (1892);
Monaco v. *Mississippi*, 292 U. S. 313 (1934).

ARGUMENT.

I.

Original Jurisdiction Should Not be Exercised by This Court in This Case to Construe the Revenue Laws of Another Sovereignty.

The argument under this Proposition is addressed to ground numbered I of the Return to the Rule to Show Cause.

It appears from the Statement in Support of Motion for leave to file the Bill of Complaint and from the Bill of Complaint that the question for decision in the case is the effect of the section of the revenue laws of the State of Alabama granting a lien for *ad valorem* real estate taxes, namely section 372 of the Revenue Laws of 1935 (General Acts of Alabama, p. 256, 566).[6] This lien arises from and after the first day of October of each year when such property becomes assessable. Real estate is assessable in Alabama as of the first day of October of each year (*op. cit.* p. 275, Sec. 31, see also pp. 274, 275, 279, 280, Sec. 29, 30, 32, 42).[7]

These sections of the Revenue Laws of Alabama along with the other sections relating to the levy, assessment, and collection of *ad valorem* real estate taxes must be considered and construed by this Court if this Bill of Complaint is filed. Furthermore, there is no question of law involved in the case arising under the Constitution of the United States or laws of Congress. The sole question for decision is a proper construction of the revenue laws of the State of Alabama.

The original jurisdiction of this Court is, no doubt, sought under the provisions of Art. III, Section 2, clause 2,[8] of the Federal Constitution which extends the original jurisdiction of this Court to cases in which a State is a

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[6] Appendix pages 31-32.
[7] Appendix pages 26-29.
[8] Appendix page 23.

party. See *Oklahoma* v. *Texas*, 258 U. S. 574, 581 (1922), and cases cited there. The fact that the United States is a party is not sufficient to give this Court original jurisdiction of a case. *United States* v. *West Virginia*, 295 U. S. 463, 470 (1935).

Furthermore, the fact that a State is a party does not compel this Court to entertain all actions involving such States. See *Missouri* v. *Illinois & Chicago District*, 180 U. S. 208, 239, 240 (1901). *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 287 (1888).[9] The suit must present a "case" or "controversy" within the meaning of the first clause of Art. III, section 2, of the Constitution.

Massachusetts v. *Mellon*, 262 U. S. 447 (1923);
Florida v. *Mellon*, 273 U. S. 12 (1927);
Alabama v. *Arizona*, 291 U. S. 286 (1934);
United States v. *West Virginia*, 295 U. S. 463 (1935).

Not every matter sufficient to warrant a resort to the judiciary by one person against another will justify a resort to the original jurisdiction of this Court by a State.

Alabama v. *Arizona*, 291 U. S. 286, 292 (1934).

See also

Georgia v. *Tennessee Copper Co.*, 206 U. S. 230, 237, 238 (1907).

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[9] This self restraint placed on the jurisdiction of the courts is further evidenced by cases within the appellate jurisdiction of this Court. Hence, jurisdiction has been foregone in cases involving corporate reorganizations in the courts of foreign states. *Rogers* v. *Guaranty Trust Co.*, 288 U. S. 123 (1933). See *Burnrite Coal Co.* v. *Riggs*, 274 U. S. 208 (1927); admiralty cases involving foreigners, *Charter Shipping Co. Ltd.* v. *Bowring, Jones & Tidy, Ltd.*, 281 U. S. 515 (1930); *Langnes* v. *Green*, 282 U. S. 531 (1931); *Canada Malting Co. Ltd.* v. *Paterson Steamships, Ltd.*, 285 U. S. 413 (1932). Torts committed in other jurisdictions, *Slaten* v. *Mexican National N. R. Co.*, 194 U. S. 120 (1904); *Cuba R. R. Co.* v. *Crosby*, 222 U. S. 473 (1912). Where other courts have taken jurisdiction, *Kansas City Southern Ry.* v. *United States*, 282 U. S. 760 (1931); *Cf. Douglas* v. *New York N. H. & H. Ry.*, 279 U. S. 377 (1929).

In discussing controversies between States, Mr. Chief Justice Taft in *North Dakota* v. *Minnesota*, 263 U. S. 365, 373 (1923), said:

> "The jurisdiction is therefore limited generally to disputes which, between States entirely independent, might be properly the subject of diplomatic adjustment."

Therefore, we believe it cannot be doubted that this Court may deny leave to file the Bill of Complaint in this case. The question, therefore, resolves into whether such leave should be denied.

It has been stated generally the courts of one State will not enforce the tax laws of another State.

Restatement of Conflicts of Laws (1934) Section 610 (c). See *Moore* v. *Mitchell*, 281 U. S. 18 (1930). See also *Massachusetts* v. *Missouri*, 308 U. S. 1 (1939), where this Court refused to enforce the inheritance tax laws of the State of Massachusetts. But see the remarks of Chief Justice Hughes at page 20. Compare *Texas* v. *Florida*, 306 U. S. 398 (1938). But see dissenting opinion of Mr. Justice Frankfurter at page 428.

The question here, however, is whether this Court will construe the tax laws of Alabama. The only case we have found dealing with this question is *Pratt* v. *Dean*, 246 Mass. 300 (1923). The Supreme Judicial Court of Massachusetts was called upon to construe the Federal estate tax act and a New Jersey estate tax act. The Massachusetts court declined to pass upon these statutes remitting the parties to the courts of the respective jurisdictions.

Even as the Massachusetts court declined to construe the Federal tax acts, we believe this Court should decline to construe Alabama tax statutes. The reasons for this self restraint on the part of this Court are numerous.

In the first place a decision by this Court in this case would not be binding upon the courts of Alabama. The ques-

tions might be decided one way by this Court and yet the Alabama courts might decide the questions differently. This would create a most unfortunate conflict, and yet, though the title to the particular properties here involved might be cleared by a decision of this Court, admittedly the case would be erroneously decided.

In the next place, the Alabama courts are accustomed to construing Alabama tax statutes. The pertinent questions for decision are matters of common knowledge and experience by the judges. The administrative practices are known by personal experience. Reading statutes and decisions of the courts of this State cannot compensate for this intimate familiarity with the Alabama tax laws. *Cf. Hawks* v. *Hamil*, 288 U. S. 52 (1933).

No doubt the docket of this Court is crowded with cases arising under the Constitution and laws of Congress, cases primarily assigned to the Federal courts. We do not believe this docket should be further burdened with cases involving questions outside the scope of these categories. Incidentally the Clerk of the Supreme Court of Alabama informs us that the number of cases submitted in that court during the term 1939-40 was average. All cases submitted to it during that term were 359. Of this number 92 were petitions for certiorari to the intermediate appellate court of this State. The Supreme Court denied certiorari in more than fifty per cent of these cases. Furthermore, the Supreme Court of Alabama is divided into two divisions, hence, each judge was not called on to consider more than half of the 359 cases.

For these reasons, among others, we do not believe this Court should grant leave to the United States of America to file its Bill of Complaint to construe the revenue laws of the State of Alabama.

II.

Original Jurisdiction Should Not Be Exercised by This Court in This Case Since There is Another Forum Available to the Parties.

The argument under this Proposition is addressed to grounds numbered 2, 3 and 4 of the Return to the Rule to Show Cause.

Among the qualifications set up to the exercise of original jurisdiction in controversies between States, Mr. Chief Justice Hughes in the case of *Massachusetts* v. *Missouri*, 308 U. S. 1, 19 (1939) said:

> "We have observed that the broad statement that a court having jurisdiction must exercise it (see Cohens *v.* Virginia, 6 Wheat. 264, 404) is not universally true but has been qualified in certain cases where the federal courts may, in their discretion, properly withhold the exercise of the jurisdiction conferred upon them where there is no want of another suitable forum."

This idea that the existence of other available remedies is sufficient to warrant this Court to decline jurisdiction of a controversy otherwise within the limits prescribed for the Court seems to be inherent in the statement by Mr. Justice Butler in the case of *Alabama* v. *Arizona*, 291 U. S. 286, 291 (1934):

> "Its (this Court's) jurisdiction in respect of controversies between States will not be exerted in the absence of absolute necessity."

See also dissenting opinion in *Texas* v. *Florida*, 306 U. S. 398, 428 (1939).

In the exercise of appellate jurisdiction this Court held that a Federal district court in Pennsylvania should have dismissed a proceeding in that court involving the liquida-

tion of a banking concern in order that the concern be liquidated under the machinery established by the State statutes. *Pennsylvania* v. *Williams*, 294 U. S. 176 (1935). In the course of the opinion in that case, Mr. Justice Stone said: (185)

> "It is in the public interest that federal courts of equity should exercise their discretionary power with proper regard for the rightful independence of state governments in carrying out their domestic policy."

Compare the cases holding that the administrative remedies must be exhausted before a judicial review of tax assessments will be entertained.

Farncomb v. *Denver*, 252 U. S. 7 (1920);
McGregor v. *Hogan*, 263 U. S. 234 (1923);
First National Bank v. *Weld County*, 264 U. S. 450 (1924);
Gorham Mfg. Co. v. *Tax Commission*, 266 U. S. 265 (1924);
Chicago M. & St. P. R. R. Co. v. *Risty*, 276 U. S. 567 (1938).

For other cases holding that administrative remedies must be exhausted before judicial relief will be granted see:

Porter v. *Investors Syndicate*, 286 U. S. 461 (1932);
Petersen Baking Co. v. *Bryan*, 290 U. S. 570 (1934);
U. S. v. *Illinois Central R. Co.*, 291 U. S. 457 (1934);
Natural Gas Co. v. *Slattery*, 302 U. S. 300 (1937).

Furthermore, an injunction will not be granted against the collection of State taxes in the Federal district courts if the questions concerning the validity of the taxes may be determined in the State court by paying the tax under protest and bring an action at law in the State court to recover them back.

Arkansas Bldg. Assn. v. *Madden*, 175 U. S. 269 (1899);
Indiana Mfg. Co. v. *Koehne*, 188 U. S. 681 (1903);

Singer Sewing Mach. Co. v. *Benedict*, 229 U. S. 481 (1913);
Matthews v. *Rodgers*, 284 U. S. 521 (1932);
Stratton v. *St. Louis S. W. Ry.*, 284 U. S. 530 (1932);
Cf. Henrietta Mills v. *Rutherford County*, 281 U. S. 121 (1930).

We take it that in exercising discretion in deciding whether a bill of complaint may be filed in this Court the question of other available remedies will be considered. We further take it that the domestic policy of a State is a matter of concern in making this decision.

At the time the properties involved in this litigation were obtained by the United States there were several remedies available to it under the laws of the State of Alabama whereby the questions here involved could have been adjudicated by the Alabama courts. The taxes claimed could have been paid under protest and an action could have been maintained in *indebitatus assumpsit* against the officer collecting the same.

Wiley v. *Parmer*, 14 Ala. 627 (1848);
Raisler v. *Mayor & Council of Athens*, 66 Ala. 194 (1880);
Ward v. *First National Bank of Hartford*, 225 Ala. 10 (1932);
Pullman Car & Mfg. Co. v. *Hamilton*, 229 Ala. 184 (1934).

See also *Allred* v. *Dunn*, 207 Ala. 469 (1922) and cases cited there.

There are also statutes providing for this remedy. See General Acts 1935, pp. 256, 379, Sections 296-299.[10]

Furthermore after the taxes became delinquent and the property was certified to the probate judge for sale, the

[10] Appendix pages 30-31.

United States could have appealed from the order of sale made by the probate judge. General Acts 1935, pp. 256, 358, 359, Section 237.[11]

None of these remedies were sought. Instead the United States has allowed all of these remedies to expire and now seeks to prevail on this Court to exercise its original jurisdiction in this case, which remedy is not available to the taxpayers in the State of Alabama in consequence of Amendment XI to the Federal Constitution and Art. I, Section 14 of the Constitution of Alabama of 1901.[12]

The ordinary procedure followed in the State of Alabama under circumstances similar to those in this case is for the State to institute a statutory real action in the nature of ejectment in the courts of this State against the taxpayer in possession. General Acts of Alabama 1935, pp. 256, 363, Section 251.[13]

Since the United States has elected to purchase real property within the State of Alabama, it should be willing to abide by the laws and the domestic policy of this State. If the United States will consent to being made a party defendant in the courts of this State in a statutory real action in the nature of ejectment, we will assure this Court that all possible will be done to expedite the trial of this case to a final determination by the Supreme Court of Alabama in order that the questions involved in this action may be settled as expeditiously as possible. As noted above, the dockets of the courts are not so crowded but that a decision may be had as soon as the case is at issue.

For this Court to allow the United States to file this Bill of Complaint in this case is to allow the United States to ignore the orderly processes established by this State for

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[11] Appendix page 29.

[12] Appendix page 23.

[13] Appendix page 30.

the enforcement of its revenue laws and the determination of tax questions and then invoke a proceeding out of harmony with the domestic policy of this State. We are unable to believe that this Court will permit an owner of property within the State of Alabama, albeit is the federal government, to utilize the original jurisdiction of this Court in such a fashion.

III.

Original Jurisdiction Should Not be Exercised by This Court in This Case for the Complainant is Not Entitled to Relief under the Bill of Complaint.

The argument under this Proposition is addressed to grounds numbered 5, 6, 7 and 8 of the Return to the Rule to Show Cause.

In the case of *Alabama* v. *Arizona*, 291 U. S. 286, 291 (1934) Mr. Justice Butler speaking for the Court said:

> "A state asking leave to sue another to prevent the enforcement of laws must allege, in the complaint offered for filing, facts that are clearly sufficient to call for a decree in its favor."

The facts alleged in the Bill of Complaint offered in the case at bar instead of being clearly sufficient to entitle the United States to a decree will compel the opposite result. That is, the facts alleged in the Bill of Complaint will compel a decree for the State of Alabama.

We take it there is no question but that the decision in this case will be governed by Alabama statutes and cases construing the same *Games* v. *Stiles*, 14 Peters, 322 (1840); *Witherspoon* v. *Duncan*, 4 Wall. 210 (1866); *Castillo* v. *McConnico*, 168 U. S. 674 (1898) *cf. Erie R. Co.* v. *Tompkins*, 304 U. S. 64 (1938). The question to be answered is when does the lien for ad valorem real estate taxes in Alabama attach to the property assessed. Obviously Alabama statutes and court decisions construing them will control.

Section 372 of the Alabama Revenue Laws of 1935 (General Acts of Alabama 1935, pp. 256, 566) [14] answers this question. This statute provides that from and after the first day of October of each year when the property becomes assessable, the state shall have a lien to secure the payment of the taxes which may be assessed. Neither this nor any other statute of Alabama requires the amount of the tax to be ascertained for the lien to attach. In fact this section 372 provides to the contrary.

The cases construing this statute and its predecessors hold that the lien attaches at the beginning of the tax year even though the levy and assessment were made subsequently. Thus in the case of *Swann & Billups* v. *State*, 77 Ala., 545 (1884), land belonging to the state was conveyed to a railroad company on May 1, 1876. By statute these lands were exempt from taxation "for the term of eight years from the first day of May 1876." The question was whether the tax year commencing January 1, 1876 and ending December 31, 1876 should be included in computing the eight years. The tax year commenced January 1 at that time (Code of Alabama of 1876 section 360). The lien for taxes attached on January 1 (*op. cit.* section 375). The assessment was not completed until the August term of the court of county commissioners (*op. cit.* section 429, 430, 433). The levy for county taxes was made at the conclusion of the assessment (*op. cit.* section 435). The Supreme Court of Alabama held that since the liability for the tax for the year 1876 attached on January 1, 1876, though the amount thereof was not finally fixed, and since the State owned the property on that date, the tax year 1876 should not be included in the computation of the eight year exemption. See *Frost* v. *State ex rel. Clements*, 153 Ala., 654, 665 (1907) concerning the change of the tax year to the

[14] Appendix pages 31-32.

period October 1 to September 30. Compare *State Tax Commission* v. *Commercial Realty Co.*, 236 Ala. 358, 361 (1938) where the court stated that the use of real estate on October 1 determined its taxable status.

The effect of this decision, that the tax lien attaches at the beginning of the tax year, has been consistently applied and followed in this state. Thus, the lien attaching at the beginning of the year binds the property in the hands of bona fide purchasers subsequent to the commencement of the year, *Driggers* v. *Cassady*, 71 Ala., 529 (1882) even though the purchase was made during the tax year.

Rodgers v. *Gaines*, 73 Ala. 218 (1882);

Kuhl v. *Long*, 102 Ala. 563 (1893);

See: *Bains Bros. Inv. Co.* v. *Purdie*, 180 Ala., 333, 337, 338 (1912);

Cf. Henderson v. *Simmons*, 234 Ala. 329, 331, 332 (1937).

Following this the court held that the lien for the tax year commencing October 1, 1920 and ending September 30, 1921, did not apply to property acquired in November, 1921, after the tax year in question had closed.

Yarbrough Bros. Hardware Co. v. *Phillips*, 209 Ala. 341 (1923).

In the case of *State* v. *Alabama Educational Foundation*, 231 Ala. 11 (1935) the court held that a statute enacted September 9, 1927, could not exempt a taxpayer for taxes for the tax year commencing October 1, 1926 and ending September 30, 1927, under section 100 of the Constitution of Alabama of 1901.[15] On page 16 the court says:

> "We think that section 100 (of the Constitution) applies whether the liability is due or not, if it is fixed. There is a personal liability for ad valorem taxes on

[15] Appendix pages 23-24.

property by its owner on October 1st, for the succeeding year, though the amount is not then ascertained, and the Legislature is powerless to relieve him of it by act effective after that date."

The exact question for decision in the case at bar was presented to the Attorney General of Alabama and he ruled that property acquired by the United States subsequent to October 1 was subject to ad valorem taxes. Biennial Report Attorney General Alabama 1936-1938 p. 724 (same opinion in Quarterly Report, Attorney General Alabama Vol. XII, July-September 1938 page 78).

The case of *Union Bank & Trust Co.* v. *Phelps*, 228 Ala. 236 (1934) is not contrary to this position. This case holds that taxes for the tax year commencing October 1, 1931 and ending September 30, 1932, could not be remitted by the Legislature by an Act approved October 22, 1932.

Nor does the *Opinion of the Justices*, 234 Ala., 358 (1937) overrule this line of cases. The question asked the court was whether the legislature might exempt homesteads from ad valorem taxes for the tax year commencing October 1, 1936 and ending September 30, 1937 by an Act approved February 20, 1937. At the same time provision was made to take care of the revenues lost to the state by reason of the exemption by other statutes. Art. IV, Section 100 of the Constitution of Alabama of 1901 prohibits the legislature from releasing any "obligation or liability of any person" to the state. We take it that the Alabama court has construed the terms "obligation or liability" in this provision of the Constitution to apply only to taxes which have become due. The court so construed the words in the case of *Union Bank & Trust Co.* v. *Phelps, supra.* We think the *Opinion of the Justices, supra,* merely reiterated this construction. We do not believe the court meant to hold that the lien did not attach on October 1 for the then

current tax year, or that liability did not attach on that date. In fact, in the *Opinion of the Justices, supra,* on page 363 the court said:

> "Since the opinion in Swann *v.* State, 77 Ala. 545, the principle has been given effect, that one who owns taxable property at the beginning of the tax year is liable for the ad valorem tax on it for that year."

All that the court held was that Art. IV Section 100 of the Constitution did not prohibit the legislature from releasing this liability provided such statutes were enacted prior to the close of the tax year. (Whether this decision overrules *State* v. *Alabama Educational Foundation, supra,* is immaterial.)

When this case is read with *Alexander* v. *Board of Revenue,* 219 Ala. 110 (1929) where the court held that taxes might be increased by elections held in accordance with legislative action at any time before the close of the tax year, it does not seem out of line with the other cases holding the lien to attach on October 1 for the current year. The point is this: the lien attaches at the beginning of the tax year, but the amount of taxes due may be increased *Alexander* v. *Board of Revenue, supra,* or reduced *Opinion of Justices, supra,* by legislative action, without violating any constitutional provision.

Based on this theory we ruled as noted above, that when the federal government purchased real estate subsequent to October 1 that the taxes should be paid for the then current tax year.

In consequence of the United States taking the position it is maintaining in this case, contrary to what we believe to be the law and opposed to the administrative construction placed thereon, we think it not amiss to tell the Court the result of this conflict. If the United States buys one parcel of property from a vendor in Alabama who owns two par-

cels, then the taxes are collected from the vendor for the taxes on both parcels, for our lien (Section 372 of the Revenue Laws) gives the State a lien on all property owned by the taxpayer for all taxes. If the vendor pays the taxes only on the parcel of property which he does not sell to the United States, that parcel is then sold by the State for the taxes on the parcel sold to the United States.

If on the other hand, the United States buys all of the property a vendor owns in this State, then the taxes are not collected on the property. The land is sold to the State for taxes as in the case at bar, but since no consent has been given for the State to sue the United States, the State merely has title to property it is unable to obtain.

For the United States to conform to the Alabama State revenue laws as construed and administered in the State would not cost the Federal Government any more money. The United States pays the vendor the value of the land. Whether the vendor keeps all of the money or pays the State the taxes for the current year will not increase the value of the land nor should it increase the cost of the land to the Government. The United States could merely require the vendor of the land to produce a tax receipt for the current years taxes as well as the past years taxes, which we understand is required, in order for the vendor to perfect title to the land sold.

IV.

Original Jurisdiction Cannot Be Exercised by This Court in This Case to Make the State of Alabama a Defendant.

The argument under this Proposition is addressed to the ground Numbered 9 of the return to the rule to show cause.

Art. I, Section 14 of the Constitution of Alabama of 1901 [16]

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[16] Appendix page 23.

prohibits the State of Alabama from ever being made a party defendant in any action at law or equity. This constitutional provision, as are all such provisions in State constitutions, is a limitation of power. In other words, the inhabitants of Alabama have altered the status of the State by creating it without the power to be sued. By reason of this change of the nature of the sovereignty of the State it no longer exists as a suable entity. That power has been withdrawn by the people.

See *Alabama Industrial School* v. *Reynolds*, 143 Ala. 579 (1904);

Alabama Industrial School v. *Addler*, 144 Ala. 555 (1905);

State Docks Commission v. *Barnes*, 225 Ala. 403 (1932);

Dunn Construction Co. v. *State Board of Adjustment*, 234 Ala. 372 (1937).

The fact that at one time the State was subject to suit and by adopting the Federal constitution waived the necessity of consent to be sued in this Court, see *United States* v. *Texas*, 143 U. S. 621 (1892), is not controlling. For now this right to consent to be sued has been withheld by the people. See *Alabama Industrial School* v. *Addler, supra, Cf. Monaco* v. *Mississippi*, 292 U. S. 313 (1934).

Conclusion.

Since the proposed Bill of Complaint in this case seeks to have this Court construe the revenue laws of the State of Alabama, and since there is another forum available to the parties for the settlement of the dispute between the parties, and since the complainant is not entitled to relief under the said Bill of Complaint and since this is an effort to make the State of Alabama a party defendant in violation of its Constitution, leave should not be granted to the United States of America to file the proposed Bill of Com-

plaint, and the Motion for Leave to File Complaint should be denied.

THOS. S. LAWSON,
Attorney General, State of Alabama.

J. EDWARD THORNTON,
Assistant Attorney General, State of Alabama,
Of Counsel.

APPENDIX.

Constitution of United States of America.

Article III, Section 2, Clauses 1 and 2.

"Section 2. The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—between a state and citizens of another state;—between citizens of different states;—between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

"In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make."

Constitution of Alabama of 1901.

Article I, Section 14.

"Sec. 14. That the State of Alabama shall never be made a defendant in any court of law or equity."

Article IV, Section 100.

"Sec. 100. No obligation or liability of any person, association, or corporation held or owned by this state, or by any county or other municipality thereof, shall ever be remitted, released, or postponed, or in any way diminished, by the legislature; nor shall such liability or obligation be extinguished except by payment thereof; nor shall such liability or obligation be exchanged or transferred except upon

payment of its face value; provided, that this section shall not prevent the legislature from providing by general law for the compromise of doubtful claims."

ARTICLE XIV, SECTION 269.

"Sec. 269. The several counties in this state shall have power to levy and collect a special tax (a) not exceeding ten cents on each one hundred dollars of taxable property in such counties, for the support of public schools; provided, that the rate of such tax, the time it is to continue, and the purpose thereof, shall have been first submitted to a vote of the qualified electors of the county, and voted for by three-fifths of those voting at such election; but the rate of such special tax shall not increase the rate of taxation, state and county combined, in any one year, to more than one dollar and twenty-five cents on each one hundred dollars of taxable property; excluding, however, all special county taxes for public buildings, roads, bridges, and the payment of debts existing at the ratification of the constitution of eighteen hundred and seventy-five. The funds arising from such special school tax shall be so apportioned and paid through the proper school officials to the several schools in the townships and districts in the county that the school terms of the respective schools shall be extended by such supplement as nearly the same length of time as practicable; provided, that this section shall not apply to the cities of Decatur, New Decatur, and Cullman."

AMENDMENT III.

"Special School Tax Amendment."

"Article XIX, Section 1. The several counties in the State shall have power to levy and collect a special county tax not exceeding thirty cents on each one hundred dollars worth of taxable property in such counties in addition to that now authorized or that may hereafter be authorized for public school purposes, and in addition to that now authorized under Section 260 of Article XIV of the constitution; provided, that the rate of such tax, the time it is to continue and the purpose thereof shall have been first sub-

mitted to the vote of the qualified electors of the county, and voted for by a majority of those voting at such election.

"Section 2. The several school districts of any county in the State shall have power to levy and collect a special district tax not exceeding thirty cents on each one hundred dollars worth of taxable property in such district for public school purposes; provided, that a school district under the meaning of this section shall include incorporated cities or towns, or any school district of which an incorporated city or town is a part, or such other school districts now existing or hereafter formed as may be approved by the county board of education; provided further, that the rate of such tax, the time it is to continue and the purpose thereof shall have been first submitted to the vote of the qualified electors of the district and voted for by a majority of those voting at such election; provided further, that no district tax shall be voted or collected except in such counties as are levying and collecting not less than a three-mill special county school tax.

"Section 3. The funds arising from the special county school tax levied and collected by any county shall be apportioned and expended as the law may direct, and the funds arising from the special school tax levied in any district which votes the same independently of the county shall be expended for the exclusive benefit of the district, as the law may direct."

Code of Alabama of 1923.

SECTION 213 AS AMENDED BY AN ACT APPROVED APRIL 21, 1936, GEN. ACTS OF ALABAMA, EX. SESS. 1936, P. 217.

"The Court of County Commissioners, Board of Revenue or other governing body of any county in this State, which county had outstanding on October 1, 1935, indebtedness evidenced by valid warrants or other evidences of indebtedness, may fund or refund said indebtedness by the issuance of funding or refunding warrants of said county in an amount not greater than the face amount of the debts being funded or refunded, including any interest which may have

accrued thereon. Funding or refunding warrants issued under the provisions of this Act shall mature serially in annual installments over a period of time not exceeding twenty years from the date of such funding or refunding and may bear interest at a rate not exceeding six percentum per annum. Such interest shall be payable semi-annually and may be evidenced by coupons attached to said warrants, or otherwise, as the governing body of said county may in its discretion deem advisable."

Revenue Laws of Alabama of 1935.

GENERAL ACTS OF ALABAMA OF 1935.

Page 263:

"Section 8. There is hereby levied for the purpose and upon the property hereinafter named and not specifically exempted from taxation, annual taxes, as follows, to-wit: (a) For the maintenance of the public schools of this State, thirty cents ($.30) on each one hundred dollars ($100.00) of the assessed value of taxable property. (b) For the relief of needy Confederate soldiers and sailors, resident citizens of Alabama, and their widows, ten cents ($.10) on each hundred dollars ($100.00) of the assessed value of taxable property. (c) For the use of the State and to raise revenue therefor, twenty-five cents ($.25) on each one hundred dollars ($100.00) of the assessed value of taxable property."

Pages 274, 275:

"Section 29. The return and listing of property, for taxation by the Tax Assessor must commence on the first day of October in every year, and shall be finished by him on the first day of January following; but the Assessor may be allowed through the third Monday in January in each year to make a supplemental return or list of property which he may have failed to have returned or listed prior to the first day of January, and such supplemental return must be entered as any other return and shall be embraced in the abstracts made for the Comptroller and Collector and State Tax Commission."

"Section 30. Between the first day of October and the first day of January of each year, the Tax Assessor shall in all counties having a population of one hundred thousand or less, visit each voting place in each precinct for the purpose of listing property for taxation, and he shall remain there one day in all county precincts and towns of less than one thousand inhabitants, from eight o'clock A. M. until four o'clock P. M. In towns other than county seats, of five thousand inhabitants or more, he shall remain at each place of appointment for one week, either by himself or deputy. In places of one thousand inhabitants and not over five thousand, he shall remain at the place of appointment for three days, either by himself or deputy. The Assessor shall give at least ten days notice by advertisement in a newspaper, if there be one published in the county, and by bill posted at five or more public places in each election precinct, of the time when he will attend to receive the tax returns. Upon the failure of the Tax Assessor to give the notice required by this Section, or to attend any appointment made by him in any precinct, he shall after legal notice, fill new appointments, or forfeit all claims to fees from such persons in such precinct as were disappointed by his non-attendance. He shall keep the office open at the court house all the year round. Provided, that the Court of County Commissioners or court of like jurisdiction, may by order duly entered on its minutes as other orders and decrees of the court are entered, relieve the Tax Assessor from making visits to each voting place in each precinct as above provided, when in the opinion of the court it is deemed advisable."

"Section 31. It is the duty of every person in every election precinct to attend in person before the Assessor on the first day of the appointment in the precinct of the taxpayer's residence, and then and there render to the Assessor under oath a full and complete list of all property of which he was owner, or in which he had any interest whatever, or of which he was trustee or agent on the first day of October of that year, and to enter upon such paper the amount of fire insurance carried upon any of the property so listed. The land and improvements thereon must be sep-

arately listed. On failure of the taxpayer for thirty days after demand or notice by the tax assessor, to furnish a sufficient description of his real estate, said tax assessor shall secure such description from the records of conveyance in the office of the probate court of his county, and if he is unable to get a sufficient description from such records, then by a survey of property by the county surveyor or otherwise, and the reasonable expenses incident thereto shall be allowed by the commissioners court or board of revenue, and paid out of the general fund of the county wherein the property involved is located, and such amount as is allowed shall be added as costs to the taxes assessed against such taxpayer, and when collected shall be covered into the general *found* of the county.

"Section 32. The Tax Assessor or his deputy, or any other officer administering the oath to the person making the return of property for taxation, must orally administer the following oaths to every taxpayer before making his returns: "You do solemnly swear that you will true answers make to all lawful questions which may be put to you touching the return you are about to make, and that you will make a full and complete return of all property owned by you, or in which you had any interest whatever or of which you were trustee or agent on the first day of October of the present tax year, and that you will make a full, complete and true statement of the amount of fire insurance thereon, and this return is made upon your personal knowledge, so help you God."

Pages 279, 280:

"Section 42. Every person of full age and sound mind and every firm or body corporate or politic, and every trustee and receiver shall, when legally called on by the Assessor, forthwith make a full, true and distinct statement of all real and personal property, with a correct description thereof of land and improvements, separately of which he is the owner or holder, individually, or as guardian, parent, husband, wife, trustee, administrator, executor, receiver, accounting officer, partner, agent or factor, and including all monies hoarded, held or owned on the first day of Octo-

ber of the current tax year, or any time preceding or succeeding the first day of October of the current year.

Page 288:

"Section 64. The Court of County Commissioners or other court of like jurisdiction, at the regular February term in each year, shall levy the amount of general taxes required for the expenses of the county for the current year, not to exceed one-half of one per cent of the value of the taxable property as assessed for revenue for the State as shown by the book of assessments after it shall have been corrected, and at the same time levying the amount of special taxes required for the county for the current year, which levy shall be made upon the same basis of valuation provided above and when such levy shall be made, to certify the rate or rates of taxation, and the purpose or purposes for which the tax is levied to the Tax Assessor of the County."

Pages 358, 359:

"Section 237. From any decree rendered by the probate court for the sale of real estate for the payment of taxes, the defendant in the cause or the State, in behalf of itself and the county, may appeal to the next term of the circuit court, in equity, of the county, within thirty days after the rendition of the decree. If the defendant appeals, he must execute a bond in double the amount of the decree, payable to the State of Alabama, with sufficient surety to be approved by the judge of probate, and conditioned that he will prosecute the appeal to effect, and pay such judgment as the appellate court may render thereon; but the State shall not be required to execute any bond. The solicitor of the circuit or county court shall represent the State on such appeal, and of the pendency thereof the judge of probate must give him notice in writing; and an appeal by the State, notice thereof shall be given the defendant, as in other cases of appeal from the court to the circuit court in equity, such appeal must be tried de novo, upon an issue made up under the direction of the court. If the defendant appeals, and the issue is decided adversely to him, the court

must render judgment against him and his sureties in favor of the State for the amount of the taxes, fees and costs, besides the costs of the appeal, and such judgment shall be a lien upon the lands described in the decree from which the appeal was taken, which lien with a description of the lands, must be declared in the judgment."

Page 363:

"Section 251. When lands are bid in for the State at tax sales the State shall be entitled to possession of said lands immediately upon execution of the certificate of sale by the Judge of Probate. If possession be not surrendered within six months from the date of sale, after demand therefor is made by the State Land Commissioner in behalf of the State, or if the certificate has been assigned, by the assignee, then the State Land Commissioner in the name of the State or the assignee of the State, if the certificate has been assigned, may maintain an action in ejectment, unlawful detainer, or a statutory real action in the nature of ejectment, or other proper remedy for the recovery of the possession of the lands purchased of such sales, and shall be entitled to hold the possession thereof on recovery. Provided that this shall not affect the right of minors or insane persons to redeem as provided in this Act. Provided mortgagees or other lien holders of record at the time of sale shall be served with a written notice of purchase at tax sale for the State, which notice shall be given in the name of the State by the State Land Commissioner, and such mortgagees or other lien holders shall have one year from date of such notice to redeem such lands. Privided that a notice filed in the office of the Judge of Probate of the county where the land is situated reciting the sale, the fact that such lands were bid in for the State, and the certificate of purchase and notifying all parties desiring to redeem shall be and operate as sufficient notice to such mortgagees or lien holders to redeem."

Page 379:

"Section 296. Any taxpayer who through any mistake, or by reason of any double assessment, or by any error, in the assessment or collection of taxes, or other error, has

paid taxes that were not due upon the property of such taxpayers, shall, unless such tax was with knowledge of the facts voluntarily paid by the taxpayer, be entitled, upon making proof to the *satisfaction* of the State Comptroller of such payment, to have such taxes refunded to him if application shall be made therefor, as hereinafter provided, within two years from the date of such payment.

"Section 297. In order to procure the refunding under the provisions of the preceding section, of the amounts erroneously paid for taxes on property, the taxpayer, his heirs or assign shall file in duplicate a petition directed to the judge of probate of the county wherein the land is situated, setting up the facts relied on to procure the refunding of the money so erroneously paid.

"Section 298. The judge of probate shall examine said petition, and also the tax books of his county, and if the facts set forth in the petition are such as to entitle the petitioner to the refunding of the money as prayed for, he shall so certify to the Comptroller, stating the amount to be refunded by the State, and forward to the Comptroller a copy of the petition with his certificate endorsed thereon, and if the Comptroller shall be satisfied that the petitioner is entitled to have the money refunded to him, he shall draw his warrant on the State treasurer in favor of the petitioner for such an amount as the certificate of the probate judge shows should be refunded.

"Section 299. The judge of probate shall likewise certify his findings on the duplicate petition, stating the amount of money which petitioner is entitled to receive from the county, and such petition, with his certificate endorsed thereon, he shall deliver to the petitioner, who may present the same to the court of county commissioners or other like governing body, and if said court is satisfied with the proof of the claim made by the petition, the court must allow said claim to the amount of tax paid to the county, and draw a warrant on the treasurer of the county for the amount allowed in favor of the petitioner."

Page 566:

"Section 372. From and after the first day of October of each year, when property becomes assessable the State

shall have a lien upon each and every piece or parcel of property owned by any taxpayer for the payment of all taxes which may be assessed against him and upon each piece and parcel of property real or personal assessed to owner unknown which lien shall continue until such taxes are paid, and the county shall have a like lien thereon for the payment of the taxes which may be assessed by it; and if such property is within the limits of a municipal corporation such municipal corporation shall have a like lien thereon for the payment of the taxes which may be assessed by it. These liens shall be superior to all other liens and shall exist in the order named and each of such liens may be enforced and foreclosed by sale for taxes as provided in this Act, or as other liens upon property are enforced."

(1870)

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